

1 **II. BACKGROUND**

2 Plaintiff is currently conducting post-trial discovery to aid in collecting its \$63,541.59 default
3 judgment against Defendant. The judgment includes monetary compensation as well as a permanent
4 injunction. Plaintiff has served a subpoena on Google to determine the identity and location of the
5 owner(s) of ComplaintsBoard.com as well as to locate its assets. In the present motion, Defendant
6 moves to quash the subpoena.

7 **III. LEGAL STANDARD**

8 Upon a timely motion, Rule 45(c)(3) requires the court to quash or modify a subpoena that
9 “requires disclosure of privileged or other protected matter, if no exception or waiver applies.” *See*
10 Fed. R. Civ. P. 45(c)(3). Courts have broad authority under Rule 26(c) to issue protective orders
11 regarding discovery. *Gray v. First Winthrop Corp.*, 133 F.R.D. 39, 39 (N.D. Cal. 1990).

12 “The party issuing the subpoena must demonstrate that the information sought is relevant and
13 material to the allegations and claims at issue in the proceedings.” *See Night Hawk Ltd. v.*
14 *Briarpatch Ltd., L.P.*, 2003 WL 23018833, *8 (S.D.N.Y. 2003). However, the burden of persuasion
15 to show a subpoena is otherwise objectionable is on the moving party. *See, e.g., Phillips v. City of*
16 *Fairfield*, 2006 WL 2868966 (E.D. Cal. Oct. 6, 2006) (“The burden of showing that a subpoena is
17 unreasonable and oppressive is upon the party to whom it is directed”) quoting *Goodman v. United*
18 *States*, 369 F.2d 166, 169 (9th Cir. 1966).

19 **IV. DISCUSSION**

20 ComplaintsBoard.com argues that the subpoena to Google should be quashed because XV
21 has failed to provide sufficient evidence to support each of its causes of action against
22 ComplaintsBoard.com. ComplaintsBoard.com also argues that the issued subpoena is overly broad.

23 ComplaintsBoard.com applied the test illustrated in *Highfields Capital Mgmt.* wherein the
24 court weighs the competing interests of large corporations, personal rights, the need for federal
25 copyright protection, and personal privacy. *See Highfields Capital Mgmt., L.P. v. Doe*, 385 F. Supp.
26 2d 969, 974 (N.D. Cal. 2004). The test is comprised of two parts. First, the plaintiff must have
27 sufficient evidence for each element of the causes of action. If plaintiff makes that showing, then the
28 court must weigh the harm to the plaintiff if the motion to quash is granted against the harm to the

1 defendant if the motion is denied. *See id.* at 975-976.

2 ComplaintsBoard.com argues that XV failed the first prong by not bringing forth sufficient
3 proof for a cause of action involving copyright infringement and for two causes of action involving
4 trademark infringement.

5 XV argues that it does have sufficient proof for its causes of action due to the final judgment
6 already obtained against ComplaintsBoard.com. *See Danning v. Lavine*, 572 F.2d 1386, 1388 (9th
7 Cir. 1978) (“Upon entry of a default judgment, facts alleged to establish liability are binding upon
8 the defaulting party, and those matters may not be relitigated.”).

9 XV argues that it has satisfied the requirements by applying the test illustrated in *UMG*
10 *Recordings*. The test determines if a subpoena is proper dependent upon the plaintiff establishing:

11 (1) a concrete showing of a *prima facie* claim of actionable harm; (2) the specificity of
12 the discovery request; (3) the absence of alternative means to obtain the subpoenaed
13 information; (4) a central need for the subpoenaed information to advance the claim;
14 and (5) the Doe defendant’s expectation of privacy.

15 *See UMG Recordings, Inc. v. Does 1-4*, 2006 WL 1343597, *2 (N.D. Cal. 2006).

16 *UMG Recordings* is the most appropriate case to apply here, as it involved copyright claims.
17 The *Highfields* case did not involve any copyright claims. Moreover, the *Highfields* case involved
18 issues of anonymous commentary and criticism that are not involved in the present case.

19 **A. A Concrete Showing of a *Prima Facie* Claim of Actionable Harm**

20 ComplaintsBoard.com contends that XV fails to provide evidence to support its claims.
21 Evidence is not necessary, however, as the allegations were established by the default judgment. *See*
22 *Fair Housing of Marin v. Combs*, 285 F.3d 899, 906-07 (9th Cir. 2002) (Upon default “the general
23 rule is that well-pled allegations in the complaint regarding liability are deemed true”). In this
24 regard, a default judgment is a stronger showing than merely a *prima facie* showing. Because a
25 default judgment is essentially a conclusive finding of “actionable harm,” XV has made a sufficient
26 showing to satisfy the first prong of *UMG Recordings*.²

27 ComplaintsBoard.com’s belated attempt to contest the allegations of the complaint is
28 inappropriate. *See Virgin Records America v. John Doe*, 2009 WL 700207 (E.D.N.C. March 16,

² The court takes notice that no motion to set aside the default judgment has been filed in the District Court of Arizona, as of the date of this order.

1 2009) (“Defendant’s defenses should be raised in an answer, or some other pleading, and not a
2 motion to quash.”).

3 **B. Specificity of the Discovery Request**

4 ComplaintsBoard.com argues that the subpoena to Google should be quashed because it is
5 overbroad in time and scope.

6 XV argues, among other things, that the information sought is relevant to establishing the
7 true identity of the owner(s) of ComplaintsBoard.com. XV notes that it has no alternative means of
8 locating the owner of the email address, editor.complaintsboard@gmail.com, except through the
9 subpoena. At the hearing, XV also noted that the information could help it enforce its monetary
10 judgment.

11 In reply, ComplaintsBoard.com focuses on the overbreadth issue of the subpoena, stating that
12 it encompasses irrelevant and confidential information.

13 Much of the information sought in the subpoena is relevant to XV establishing the true
14 identity of ComplaintsBoard.com’s owner(s) and enforcing the judgment of monetary damages. XV
15 is entitled to conduct such post-litigation discovery to enforce the judgment. *See Fed. R. Civ. P.*
16 *69(a)(2).*

17 For example, paragraph 1 seeks only information about the identity of the owner of
18 editor.complaintsboard@gmail.com. This paragraph is sufficiently limited to relevant information.

19 However, the scope of the subpoena also encompasses documents that are not relevant to
20 either establishing the true identity of ComplaintsBoard.com or enforcing the judgment.

21 Paragraph 2 is overbroad to the extent it seeks information about any “Ivonne Wainwright”
22 other than the “Ivonne Wainwright” who is connected with www.complaintsboard.com or
23 editor.complaintsboard@gmail.com. This paragraph is hereby deemed limited to the “Ivonne
24 Wainwright” who is connected with www.complaintsboard.com or
25 editor.complaintsboard@gmail.com.

26 Paragraph 3 is overbroad to the extent it seeks any random email address mentioned on the
27 website. Paragraph 3 is deemed limited to the email addresses of those individuals who appear to be
28 owners, operators, or agents of ComplaintsBoard.com.

1 Paragraph 4 includes any document that “discuss[es], show[s], evidenc[es], or otherwise
2 relat[es] to any individual utilizing the name ‘ComplaintsBoard.com’.” This paragraph is overly
3 broad because it seeks any document that happens to mention ComplaintsBoard.com. Paragraph 4 is
4 hereby deemed limited to documents that could lead to the location or identity of the owner(s) of
5 ComplaintsBoard.com, or to the location of its assets or source(s) of revenue. This could include
6 things such as IP addresses, any billing or payment information that relate to
7 editor.complaintsboard@gmail.com or to the revenue or income of Complaintsboard.com, bank
8 account information, or information regarding other Internet Service Providers used by
9 ComplaintsBoard.com. The payment information is relevant because, once a judgment has been
10 rendered, a plaintiff is entitled to discovery regarding the revenue or income of the defendant. *See*
11 *Fed. R. Civ. P. 69(a)(2); United States v. McWhirter*, 376 F.2d 102, 106 (5th Cir. 1967) (“Rule 69
12 was intended to establish an effective and efficient means of securing the execution of judgments
13 [by] securing . . . information relating to the assets of the judgment debtor.”).

14 **C. The Absence of Alternative Means**

15 XV argues that because ComplaintsBoard.com’s owner concealed his or her identity, XV has
16 no alternative means of locating and identifying the owner(s) of ComplaintsBoard.com and locating
17 the owner(s) assets. XV has researched the publicly available information relating to
18 ComplaintsBoard.com without being able to determine the identity or the location of its owner(s).
19 Google, however, is in a position to provide Plaintiff with the needed information. *See Elektra*
20 *Entertainment Group, Inc. v. Doe* 2008 WL 5111885, *8 (E.D.N.C. 2008) (“Plaintiffs appear to
21 have no alternate means of identifying defendant in the absence of a subpoena compelling the ISP to
22 provide such information.”).

23 **D. A Central Need for the Subpoenaed Information**

24 In order to enforce the default judgment, XV must determine the identity and location of
25 ComplaintsBoard.com’s owner(s) and their assets. *See id.* (“plaintiffs require identifying
26 information for defendant sought to be able to effect service on him and prosecute their colorable
27 copyright infringement claim against him.”). If the court blocked access to this information, XV
28 would be deprived of the ability to enforce its judgment.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

E. Doe Defendant’s Expectation of Privacy

Although ComplaintsBoard.com asserts that it has a free speech right, the “First Amendment does not . . . protect copyright infringement.” *See Elektra Enter. Group, Inc. v. Doe*, 2008 WL 5111885, *7 (E.D.N.C. 2008) citing *Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 555-56 (1985); *see also Arista Records, LLC v. Does 1-16*, 2009 WL 414060, *8 (N.D.N.Y. 2009) (finding that “the Doe Defendants’ First Amendment right to anonymous speech must give away to Plaintiff’s need to obtain their identities.”). The default judgment establishes that ComplaintsBoard.com has violated XV’s copyrights. Thus, “Defendants’ First Amendment right to anonymous speech must give away to Plaintiff’s need to obtain their identities.” *See Arista Records, LLC v. Does 1-16*, 2009 WL 414060, *8 (N.D.N.Y. 2009).

V. CONCLUSION

Any confidential information sought can be adequately protected with a protective order to govern the handling of confidential information. No later than February 9, 2010, the parties shall submit either a stipulated form of protective order, or else their respective proposed forms of protective order. The protective order should include an Attorneys’ Eyes Only level of protection. The order should be drafted to apply specifically to documents produced by Google.³

ComplaintsBoard.com has not met its burden of showing that the subject subpoena should be quashed in its entirety. It has shown, however, that portions of the subpoena are overly broad.

Therefore,

IT IS HEREBY ORDERED that ComplaintsBoard.com’s motion is DENIED, however the subpoena shall be limited as discussed herein.

Dated: 1/27/10


PATRICIA V. TRUMBULL
United States Magistrate Judge

³ The parties may also wish to prepare a form of protective order to be submitted to the United States District Court for the District of Arizona, where the case was filed.